

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

PARTEC AG and BF EXAQC AG,

Plaintiffs,

vs.

MICROSOFT CORPORATION,

Defendant.

Civil Action No. 2:24-cv-00433-RWS

JURY TRIAL DEMANDED

JOINT MOTION FOR FEDERAL RULE OF EVIDENCE 502(D) ORDER

Plaintiffs ParTec AG and BF exaQC AG (“Plaintiffs”) and Defendant Microsoft Corporation file this Joint Motion for Federal Rule of Evidence 502(d) Order.

On April 11, 2025, Plaintiffs served a privilege log for seven documents that Plaintiffs assert are attorney-client privileged and work product. Microsoft disputes that the documents are privileged or work product. The parties have met and conferred concerning their disagreement. As a compromise to avoid burdening the Court with a dispute, Plaintiffs have agreed to produce document numbers 1–7 from Plaintiffs’ April 11, 2025 Privilege Log in exchange for Microsoft’s stipulation that it will not argue that the act of production constitutes a waiver of privilege or work product protections for any other document or a subject matter waiver; rather, Plaintiffs’ production of said documents constitutes, for purposes of this Action only, a waiver of privilege only as to the contents of the produced documents. For the avoidance of doubt, Microsoft may question Plaintiffs’ witnesses regarding the produced documents and their contents. Further, this motion is limited to the effect of Plaintiffs’ production of said documents in this litigation and does not address whether any privilege or work product protections were previously waived through any other action. The parties jointly ask this Court for an order to such effect.

Accordingly, the parties respectfully request that the Court order that the production of document numbers 1–7 from Plaintiffs’ April 11, 2025 Privilege Log does not and shall not currently constitute a waiver of privilege or work product protections for any other document or a broad subject matter waiver; rather, Plaintiffs’ production of said documents constitutes a waiver of privilege only as to the contents of the produced documents. *See* Fed. R. Evid. 502(d) (“A federal court may order that the privilege or protection is not waived by disclosure connected with the litigation pending before the court — in which event the disclosure is also not a waiver in any other federal or state proceeding.”). A Proposed Order is being submitted herewith.

Dated: May 14, 2025

Respectfully submitted,

/s/ Alexander W. Aiken

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Counsel for Defendant Microsoft Corporation

CERTIFICATE OF SERVICE

This is to certify that on May 14, 2025, all counsel of record who are deemed to have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system.

/s/ Alexander W. Aiken
Alexander W. Aiken

CERTIFICATE OF CONFERENCE

The undersigned hereby certifies pursuant to Local Rule CV-7(h) that the parties conferred concerning the relief request in this motion and it is agreed.

/s/ Alexander W. Aiken
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